



POLICE DEPARTMENT

March 5, 2015

MEMORANDUM FOR: Police Commissioner

Re: Police Officer Gerald St. Louis
Tax Registry No. 935781
69 Precinct
Disciplinary Case No. 2014-11361

Police Officer Christopher Denny
Tax Registry No. 936468
Financial Crimes Task Force
Disciplinary Case No. 2014-11362

The above-named members of the Department appeared before me on
November 3, 2014, charged with the following:

Disciplinary Case No. 2014-11361

1. Said Police Officer Gerald St. Louis, on or about May 15, 2013, at approximately 1620 hours, while assigned to the 69 Precinct and on duty, in the vicinity of Avenue L and East 91st Street, Kings County, did engage in conduct prejudicial to the order, efficiency, or discipline of the New York City Police Department, in that he stopped the vehicle being operated by David Volcy without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT - PROHIBITED
CONDUCT

2. Said Police Officer Gerald St. Louis, on or about May 15, 2013, at approximately 1620 hours, while assigned to the 69 Precinct and on duty, in the vicinity of Avenue L and East 91st Street, Kings County, abused his authority as a member of the New York City Police Department, in that he frisked David Volcy without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

Disciplinary Case No. 2014-11362

1. Said Police Officer Christopher Denny, on or about May 15, 2013, at approximately 1620 hours, while assigned to the 69 Precinct and on duty, in the vicinity of Avenue L and East 91st Street, Kings County, did engage in conduct prejudicial to the order, efficiency, or discipline of the New York City Police Department, in that he stopped the vehicle being operated by David Volcy without sufficient legal authority.

P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT - PROHIBITED
CONDUCT

2. Said Police Officer Christopher Denny, on or about May 15, 2013, at approximately 1620 hours, while assigned to the 69 Precinct and on duty, in the vicinity of Avenue L and East 91st Street, Kings County, abused his authority as a member of the New York City Police Department, in that he frisked David Volcy without sufficient legal authority.

P.G. 212-11, Page 1, Paragraph 2 – STOP AND FRISK

The Civilian Complaint Review Board (CCRB) was represented by Raasheja Page, Esq. Respondents were represented by John Tynan, Esq.

Respondents, through their counsel, entered pleas of Not Guilty to the subject charges. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

Disciplinary Case No. 2014-11361

Respondent St. Louis is found Guilty.

Disciplinary Case No. 2014-11362

Respondent Denny is found Guilty.

SUMMARY OF EVIDENCE PRESENTED

Introduction

It is not disputed that on May 15, 2013, at about 1620 hours, Respondents were on duty, dressed in plainclothes, assigned to the 69 Precinct, performing anti-crime patrol duties in an unmarked Department vehicle. Respondent Denny was the operator and Respondent St. Louis was the recorder.

In the vicinity of Avenue L and East 91st Street, Brooklyn, Respondents stopped a 2003 Infiniti SUV that was being driven by David Volcy who was alone in the vehicle. Respondent Denny approached the driver's side window and Respondent St. Louis approached the passenger side of the SUV.

CCRB's Case

CCRB called David Volcy as its sole witness.

David Volcy

Volcy, who is 27 years old and an 18-year resident of Brooklyn, testified that after Respondent Denny walked up to the driver's side window and Respondent St. Louis was at the front passenger door he asked them, "Why was I being pulled over?" Neither officer responded to his question. At this point the driver's side window was only about one half inch open but, after Respondent Denny asked to see his license, Volcy lowered the window to halfway open so that he could hand Respondent Denny his license. The SUV he was driving is owned by Volcy's "Godfather." Respondent Denny then asked him to step out of the car and he did so. Respondent Denny patted down his legs and

pockets. Respondent Denny then took him by his arm and walked him to the rear of SUV where Respondent Denny and Respondent St. Louis both patted his clothing down and Respondent St. Louis went through his pockets.

When Respondent Denny asked if he could search his vehicle, Volcy consented to the search of the SUV because he had nothing to hide. Respondent St. Louis and Respondent Denny then searched his car.

Respondent Denny told Volcy that the car smelled like marijuana. Volcy responded that he was coming from work and that he did not smell marijuana. Respondents kept stating that they smelled marijuana and Volcy repeatedly told them that he did not smoke marijuana and that he possessed no marijuana. Neither Respondent said anything to him about the manner in which he had been driving. Volcy was not issued any summonses. Volcy has not filed a lawsuit regarding this incident.

On cross-examination, Volcy testified that although he smoked marijuana in the past, he no longer uses marijuana. He recalled that Respondent Denny's initial pat down included him sticking his hand inside Volcy's shirt and pants pockets, flipping all the pockets inside out, and pulling up his pants legs so that he could check Volcy's socks. Respondent St. Louis performed the same actions after Volcy was brought to the rear of the car. These searches took five or six minutes, and the search of the car took an additional ten minutes. The entire encounter lasted 18 to 20 minutes.

On redirect examination, Volcy stated that the last time he ever smoked marijuana was about four years prior to this incident. On recross-examination, he confirmed that he was arrested for criminal possession of marijuana in January, 2011.

Respondents' Case

Each Respondent testified on his own behalf.

Respondent St. Louis

Respondent St. Louis testified that he and Respondent Denny pulled Volcy's SUV over for "traffic infractions." When Respondent St. Louis approached the front passenger's window of the car, he smelled marijuana. Respondent Denny spoke with Volcy. After Volcy exited the vehicle, Respondent St. Louis walked to the rear of the SUV. Volcy joined him. They spoke, but Respondent St. Louis did not recall having any physical contact with Volcy. Respondent St. Louis denied that he had frisked Volcy or searched his pockets. Respondent St. Louis explained that because no "violent crimes" had been committed, they released Volcy with a warning and admonishment.

Respondent St. Louis prepared a Stop, Question, and Frisk Report Worksheet (CCRB Exhibit 1). [On this Worksheet, Respondent St. Louis wrote that Volcy was stopped for suspected "Burg." (burglary).] In the section of the Worksheet which asks "What Were Circumstances Which Led To Stop?" Respondent St. Louis checked the box next to "Actions indicative of acting as a lookout" and the box next to "Furtive movements." In the section of the Worksheet which requires the officer to describe the "Demeanor of Person after being stopped," Respondent St. Louis wrote "compliant."

Respondent St. Louis explained that the burglary and acting as a lookout entries he made on the Worksheet were mistakes on his part. The crime that he actually suspected that Volcy had committed was grand larceny auto. The furtive movements he noted on the Worksheet referred to the manner in which Volcy had been driving.

Respondent St. Louis wrote in his Activity Log that Volcy had been stopped for suspected "GLA" (grand larceny auto).

On cross-examination, Respondent St. Louis explained that based on the manner in which Volcy was driving the SUV he suspected he might be driving a stolen vehicle. Respondent St. Louis confirmed that Respondent Denny had frisked Volcy next to the driver's side door. Respondent St. Louis testified that for safety reasons it was his common practice to frisk drivers who exited their vehicles. He agreed that Volcy was calm and compliant throughout the encounter, that Volcy never verbally or physically threatened Respondents in any way, and that he never saw a weapon or suspicious bulge on Volcy's person. They did not issue him a summons regarding his erratic driving and they released him with a warning and an admonishment.

Respondent Denny

Respondent Denny testified that he observed Volcy go through a stop sign without coming to a complete stop. Respondents followed him for a couple of blocks and saw him repeat this act two more times. After stopping and approaching Volcy's car, Respondent Denny asked Volcy to lower his window and turn over his license, registration, and insurance card. When Volcy reached over to get his wallet out of the glove compartment, Respondent Denny saw what he believed to be loose marijuana stems and flakes on Volcy's seat and floorboard. He also smelled marijuana.

He asked Volcy to get out of the car and he frisked him. He described the frisk as a pat down of Volcy's front pants pockets. He did this because what he observed in the vehicle caused him to suspect that Volcy might possess other contraband. The frisk

lasted just seconds. He did not feel anything suspicious. He then walked Volcy to Respondent St. Louis who was at the rear of the car. He did not ask Respondent St. Louis to conduct a further frisk because there was no need for it.

He asked Volcy for permission to search the car and Volcy consented. He proceeded to search the area of the vehicle where Volcy had been sitting. He found marijuana flakes, stems, and “seeds.” He did not find any other drugs or paraphernalia. He asked Volcy if he had any prior history with marijuana use and Volcy replied that he did not smoke marijuana and that what looked like marijuana in the car was actually tobacco from Black and Mild cigars.

Respondent Denny informed Volcy that he had been stopped for running the stop signs and driving too fast. Volcy replied that he was rushing to get home. Respondent Denny accepted this explanation and decided not to issue any summonses. He advised Volcy to monitor his speed and come to complete stops at stop signs.

When he returned to the station house, Respondent Denny conducted a warrant check on Volcy’s name. The check revealed that Volcy had an active warrant for marijuana possession. The next day, Respondent Denny arrested him on this warrant.

On cross-examination, Respondent Denny reiterated that he had stopped Volcy’s car “due to traffic infractions.” He was confronted with a statement he made at his CCRB interview that “we pulled him over” to “check to see if the car is good” meaning “not stolen.” He testified that before he stopped Volcy’s car he had reason to believe that it might be a stolen car because Volcy was speeding and not making full stops at stop signs. When he was asked if he had observed any suspicious bulges on Volcy’s person, he answered, “Not particularly, no.” He agreed that Volcy possessed no weapon.

FINDINGS AND ANALYSIS

Disciplinary Case No. 2014-11361 and Disciplinary Case No. 2014-11362

Specification No. 1

Both Respondents are both charged with having stopped the car that Volcy was driving without sufficient legal authority to do so.

Volcy testified that after Respondents stopped the Infiniti SUV that he was driving, he asked them why they had pulled him over; that they did not answer his question; and that they never said anything to him about the manner in which he had been driving. I credit Volcy's claims because Respondents have offered inconsistent rationales regarding why they conducted this car stop.

In his testimony at this trial, Respondent Denny asserted that he had stopped Volcy's car solely because he had observed Volcy drive through stop signs without coming to a complete stop. However, at his CCRB interview he had stated that "we pulled him over" to "check to see if the car is good." Respondent Denny confirmed that "good" meant "not stolen." Thus, I find that Respondent Denny's prior statement betrays that the real reason that he pulled over Volcy's car was because he suspected that he might be driving a stolen car. Moreover, Respondent Denny's prior statement is consistent with Respondent St. Louis' entry in his Activity Log that they had stopped Volcy for suspected "GLA" (grand larceny auto).

Respondent St. Louis also conceded that at his CCRB interview he had stated that they had pulled over Volcy since he suspected that he might be driving a stolen car because he was driving erratically. However, on the Stop, Question, and Frisk Report

Worksheet Respondent St. Louis prepared (CCRB Exhibit 1), he wrote that Volcy was stopped for suspected “Burg” (burglary) and that the circumstances which led to the stop consisted of actions by Volcy indicative of acting as a lookout and furtive movements. Although Respondent St. Louis characterized the burglary and lookout entries as mistakes, they appear to be inventions to justify this car stop.

Since Respondents have offered no consistent legal basis for why they stopped Volcy’s SUV, I find that they had insufficient legal authority to do so. Therefore, both Respondents are found Guilty of Specification No. 1.

Disciplinary Case No. 2014-11362

Specification No. 2

Respondent Denny is charged with having frisked Volcy without sufficient legal authority. Respondent Denny admitted that after he smelled marijuana and saw what he believed to be loose marijuana stems and flakes on a seat and on the floorboard inside the car, he asked Volcy to get out of the car and then immediately frisked him by patting down Volcy’s front pants pockets. Respondent Denny testified that he did this because based on what he saw inside the vehicle he suspected that Volcy might possess other contraband. He confirmed that he had frisked Volcy even though he had not observed any suspicious bulge on Volcy’s person and had not seen anything that would lead him to suspect that Volcy possessed a weapon. Thus, Respondent Denny admitted that at the point when he frisked Volcy he possessed no information that would lead him to suspect that Volcy possessed a weapon or posed a danger to him or his partner.

Patrol Guide Procedure 212-11 “Stop and Frisk,” states that “a uniformed member of the service” may lawfully “frisk” a person only “if you reasonably suspect you or others are in danger of physical injury”¹ and the New York Court of Appeals has held that when a person who has been stopped by police officers is cooperative and non-threatening to the officers, a frisk of the person is unwarranted.²

Since Respondent Denny’s own testimony that the reason that he frisked Volcy was because he suspected that Volcy might have contraband on his person establishes that he frisked Volcy without sufficient legal authority, Respondent Denny is found Guilty of Specification No. 2.

Disciplinary Case No. 2014-11361

Specification No. 2

Respondent St. Louis is charged with having frisked Volcy without sufficient legal authority. Although Respondent St. Louis denied that he had frisked Volcy at any point, I credit Volcy’s claim that Respondent St. Louis frisked him after Respondent Denny escorted him to the rear of the SUV. Volcy’s claim that Respondent Denny frisked him was corroborated by Respondent Denny himself and the record is devoid of any reason why Volcy would falsely claim that Respondent St. Louis had also frisked him. Moreover, it is clear that when Respondent St. Louis conducted this frisk he knew that Volcy posed no physical danger because Respondent St. Louis wrote “compliant” in

¹ Patrol Guide Procedure No. 212-11(2).

² See People v. St. Clair, 54 NY2d 900, 444 NYS2d 919 (1981).

the section of the Stop, Question, and Frisk Report Worksheet (CCRB Exhibit 1) where he described Volcy's demeanor after he was stopped.

In conclusion, since Respondent St. Louis frisked Volcy in the absence of any objective evidence that Volcy possessed a weapon, I find that Respondent St. Louis had no basis to reasonably suspect that he or his partner was in danger of physical injury.

Therefore, Respondent St. Louis is found Guilty of Specification No. 2.

PENALTY

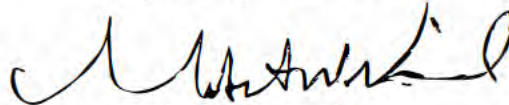
In order to determine an appropriate penalty, Respondents' service records were examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent St. Louis was appointed to the Department on July 1, 2004. Respondent Denny was appointed to the Department on January 10, 2005. Information from their personnel records that was considered in making this penalty recommendation is contained in attached confidential memoranda.

The CCRB prosecutor recommended that each Respondent receive a penalty of the forfeiture of not less than five vacation days.

In a recent decision, *Case No. 2013-10189* (Jan. 13, 2015), a nine-year police officer who had one prior disciplinary adjudication was found guilty of searching a vehicle and its driver without sufficient legal authority. In that case, the Police Commissioner disapproved the Trial Commissioner's recommended penalty of the forfeiture of eight vacation days and imposed a penalty consisting of the forfeiture of four vacation days.

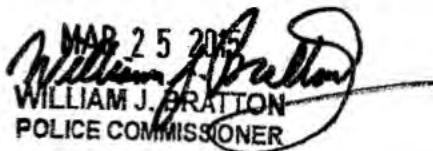
Respondents here have been found Guilty of similar misconduct and since neither of the Respondents has a formal disciplinary record, it is recommended that each Respondent forfeit three vacation days.

Respectfully submitted,



Robert W. Vinal
Assistant Deputy Commissioner Trials

APPROVED

MAR 25 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER

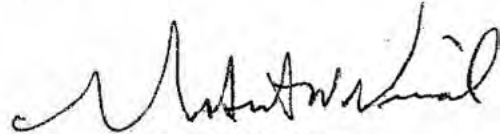
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER GERALD ST. LOUIS
TAX REGISTRY NO. 935781
DISCIPLINARY CASE NO. 2014-11361

Respondent received overall ratings of 4.0 on his 2013, 2012 and 2011 performance evaluations. He has been awarded four Meritorious Police Duty medals and four Excellent Police Duty medals. [REDACTED]

[REDACTED]. He has no monitoring records and no formal disciplinary record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner – Trials

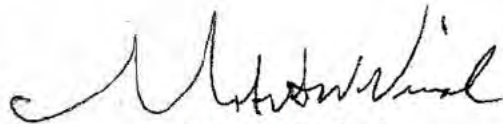
POLICE DEPARTMENT
CITY OF NEW YORK

From: Assistant Deputy Commissioner - Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
POLICE OFFICER CHRISTOPHER DENNY
TAX REGISTRY NO. 936468
DISCIPLINARY CASE NO. 2014-11362

Respondent received overall ratings of 4.0 on his 2014, 2012 and 2011 performance evaluations. He has been awarded one Meritorious Police Duty medal and eight Excellent Police Duty medals. [REDACTED]

[REDACTED] He has no monitoring records and no formal disciplinary record.

For your consideration.



Robert W. Vinal
Assistant Deputy Commissioner Trials